

REMARKS

The Examiner provides a number of rejections and we list them here in the order in which they are addressed:

- I. Claims 4-7, 9 and 14-16 are objected to.
- II. Claims 1, 3, 8, 10, 11 13 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,063,589 to Kellogg *et al.* in view of Apffel *et al.*

I. There Are Allowable Claims

The Examiner has noted that Claims 4-7, 9 and 14-16 "would be allowable if rewritten in independent form . . ." (OA, p. 3). Without acquiescing to the Examiner, but to further the prosecution, Claim 1 has been amended to include the features of Claim 4, and Claim 10 has been amended to include the features of Claim 14. A new independent claim has been drafted to incorporate the features of Claim 9. The amendments are not made to overcome the cited art (discussed below) and Applicants hereby expressly reserve the right to prosecute the original (or similar) claims in the future.

II. The Cited Art Is Deficient

The present application is a divisional of parent patent application Ser. No. 08/888,309 filed July 3, 1997 (now issued patent No. 6,048,734). Kellogg was filed May 22, 1998 - although it appears to relate to a provisional application filed May 23, 1997. The Examiner has the initial burden to show that the disclosure relied upon in the issued '589 specification is, in fact, disclosed in the provisional application. This has not been done. Indeed, no reference to the provisional application has been made. Thus, Kellogg has not be established as 102(e)/103 prior art. It may well be the case that the disclosure relied upon by the

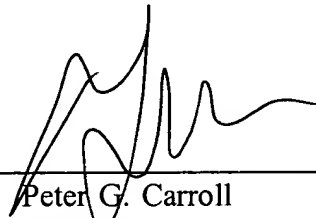
Examiner is only found in the later filed case. If so, Kellogg could never be 102(e)/103 prior art. Thus, it is premature for the Examiner to make such a rejection.¹

Applicants intend to pursue unamended Claims 1 and 10 (or similar claims) in a continuation application. If the Examiner properly establishes (in the future) that the provisional of Kellogg contains the same disclosure, the Applicants will investigate the possibility of swearing behind the May 23, 1997 date. However, until that time, it is premature to even investigate this question.

CONCLUSION

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616.

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¹ This is not the only problem with the rejection. The Examiner admits Kellogg is deficient in not having etched channels as claimed, but attempts to remedy this by combining it with other art - without a proper basis for the combination.